



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

Steven A. Dietrich
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO H. C. SHIVELY, JR.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and H. C. Shively, Jr., for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "Facility" means the two parcels identified on the Franklin County Virginia tax maps as 0350003903 and 0350003904A. The lots are adjacent to each other on the West side of Kingston Road in Franklin County, Virginia.
5. "Order" means this document, also known as a Consent Order.
6. "Shively" means H.C. Shively, Jr. owner/operator of the Facility.

7. "Va. Code" means the Code of Virginia (1950), as amended.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Shively owns and operates the Facility.
2. On November 17, 2005, DEQ staff conducted a compliance inspection of H.C. Shively, Jr. Facility and property, Parcel ID: 0350003904A (Fill area) and 0350003903 (Waste Oil disposal), in Franklin County, Virginia. Both parcels are zoned residential. Homes/buildings are located approximately 500 feet away from the Fill area and 350 feet away from the Waste Oil area and are occupied.
3. It was observed during the initial inspection, and admitted by Shively, that the sites have been used by him for the disposal of solid waste in the form of off-site land clearing debris (Fill area) and the disposal/treatment (burning) of waste oil (Waste Oil area). A review of DEQ records finds that the owner has not been issued a permit for these activities from the Director. As a result of the inspection a Notice of Violation (NOV) was issued for the Fill area and a NOV for the Waste Oil area, both on December 8, 2005.
4. Shively also owns a business across the street from the Facility. Shively admits that he has been disposing of his waste oil in the designated waste oil area for the past seven years and that he has set it on fire from time to time. Shively states the oil is generated from oil changes of his vehicles in his shop. As required by 40 CFR 279.81 (a), which is incorporated in 9 VAC 20-60-279, a person who generates a solid waste must determine if that waste is a hazardous waste. At the time of the December 8th inspection Shively had not performed any such determination.
5. The Fill area is adjacent to and in contact with a wooded area along its entire face and should it catch, or be set on fire, would be an extreme fire hazard for the neighboring homes. Both the Waste Oil and Fill areas are unrestricted with regard to access. Both could be set on fire without much effort and the Fill area also presents a fall hazard to anyone along the edge given the height and steepness of the fill.
6. Inspection of the Fill area on January 20, 2006, revealed it to clearly contain stumps, tree limbs, construction debris from homes, white goods, barrels/drums, what appear to be car parts, and plastic materials of various origins. The Fill area is estimated to be between 350,000 to 800,000 cubic feet in volume. It is estimated the Waste Oil area contains 200-300 cubic feet of contaminated soil.
7. Under the Virginia Solid Waste Management Regulations § 9 VAC 20-80-90, *Unpermitted facilities, A., Prohibitions and duties, 1.* provides: No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste

without a permit from the director. 2. No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director. 3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. No permit has been issued by the Director for any type of waste management practices at these sites. Contrary to 9 VAC 20-80-90, the Facility is treating, storing, and disposing of solid waste on-site without a permit from DEQ.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders Shively, and Shively agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Shively, and Shively voluntarily agrees, to pay a civil charge of \$5,000 in settlement of the violations cited in this Order. Shively agrees to the following payment schedule figured for six months at an annual percentage rate of 6%. Payment shall be made in six installments of \$847.98 each and due as provided in the following schedule:

Installment #	Amount Due	Due Date
1	\$847.98	September 15, 2006
2	\$847.98	October 15, 2006
3	\$847.98	November 15, 2006
4	\$847.98	December 15, 2006
5	\$847.98	January 15, 2007
6	\$847.98	February 15, 2007

Payment shall be by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment checks must include the following: 1) a tax payer identification number, 2) the notation that it is for payment of a civil charge pursuant to this Order, and 3) indicate it is "Installment # __ of 6".

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Shively, for good cause shown by Shively, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violations issued to Shively by DEQ on December 8, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional,

subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Shively admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Shively consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Shively declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Shively to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Shively shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Shively shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Shively shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Shively. Notwithstanding the foregoing, Shively agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Shively. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shively from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By his signature below, Shively voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of SEPTEMBER, 2006.

Steven A. Dietrich
Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

Shively voluntarily agrees to the issuance of this Order.

By: H.C. Shively Jr.
Date: 8/2/06

Commonwealth of Virginia
City/County of Franklin

The foregoing document was signed and acknowledged before me this 17th day of
August, 2006, by H. C. Shively Jr.

Theresa L. Jones
Notary Public

My commission expires: Jan 31, 2007

APPENDIX A

Shively shall:

1. By **August 20, 2006**, submit a Corrective Action Plan (CAP) for the Waste Oil area to WCRO. Upon approval by WCRO the CAP will become an enforceable part of this Order.
2. By **August 7, 2006**, begin removal of the remainder of the Fill waste material and dispose it at a facility permitted to accept the Fill waste.
3. By **September 7, 2006**, complete removal of all Fill waste materials from the Fill area and complete grading and seeding of the restored surface to prevent any erosion and sedimentation from occurring.
4. By **September 7, 2006**, take all piles of metal located on the Fill area to a recycling facility.
5. **Submit by September 15, 2006**, all receipts or original disposal tickets of all material disposed.
6. All submissions and/or reports shall be made to:
Steven Wright
VA DEQ Enforcement
West Central Regional Office
3019 Peters Creek Road
Roanoke, VA 24019